

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 34 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT ON BEHALF OF B.J.PATEL, FOOD INSPECTOR

Versus

RAJUBHAI GOKULDAS MANWANI

Appearance:

Mr. S.S. Patel, A.P.P. for Petitioner
MR PK PAREKH & Mr. D D.Kharmate for Respondent No.2
to 5.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/08/2000

ORAL JUDGEMENT

Rule. Learned Advocate Mr. P.K. Parekh
appearing with learned Counsel Mr. D.T. Kharmate waives
service of rule on behalf of the respondents.

1. The petitioner-State of Gujarat has filed the

present Revision Application to challenge the legality, validity and propriety of the order passed by the Chief Judicial Magistrate, Bhavnagar dated 5th November, 1999 in the proceedings of Misc. Criminal Case no.23/98.

That vide impugned order, the trial Court has allowed the application Exh.4 filed by the present respondents nos.1 to 5 who were accused of said Misc. Criminal Case no.23/98 and has dropped the proceedings of said case under Sec.245(2) of Code of Criminal Procedure, 1973 (" Code" for short) and has also discharged the accused from the offences alleged against them.

2. The respondent no.1 is the partner of the respondent no.2 firm and has been dealing in the business of distribution of product known as " Kesri Milk Masala (Everest)" from the premises shown in the title cause as address. The respondent no.4 is the nominee of the respondent no.5 and has been dealing as processor and marketer of the above stated product. That on or about 19-7-1997, the Food Inspector authorised under the provisions of Prevention of Food Adulteration Act, 1954 ("Act" for short)) took sample from the premises of the respondent no.1 of the said product " Kesri Milk Masala" and forwarded the same to the Public Analyst at Rajkot. That on receipt of report complaint was filed against the present respondents nos.1 to 5 for offences made punishable under Section 2(ix)(k) read with Section 16(1)(a)(i) of the Act. It is alleged in the said complaint that the respondents nos.4 and 5 as processor and marketer of the said product " Kesri Milk Masala" as well as the respondents nos.1, 2 and 3 as distributor of the said product have committed breach of Rule 32(e) of the Prevention of Food Adulteration Rules, 1955("Rules" for short) which amounts to misbranding the product under Section 2(ix)(k) of the Act, and as such, punishable under Section 16(1)(a)(i). That the Chief Judicial Magistrate on recording the verification of the complainant issued process against the present respondents nos.1 to 5 as accused of the said case which was registered as Misc. Criminal Case no.23/98. That the respondents nos.1 to 5 appeared before the Court and filed application Exh.4 dated 26-3-1998 contending that complaint filed against them being not maintainable in law, the proceedings initiated by the complainant requires to be dropped under Sec.245(2) of the "Code" and the accused (respondents) should be discharged.

3. The learned Chief Judicial Magistrate heard the parties of the said Criminal Case no.23/98 and vide impugned order dated 5-11-1999 held that said complaint

is not maintainable at law in view of the fact that Rule 32(e) of the Act has been struck down by the Supreme Court in the matter of DWARKANATH VS, MUNICIPAL CORPORATION, DELHI, reported vide AIR 1971 SC 1844. That in view of the said decision, non mentioning of batch number or code number on the label of a product as prescribed under Rule 32(e) of the rule cannot be said to be offence under Section 2(ix)(a) of the Act read with Section 16(1)(a)(i) of the said Act and on the basis of said finding rejected the Criminal Case no.23/98 by dropping the proceedings and discharged the respondents nos.1 to 5 who were the accused of the said case. The State of Gujarat has challenged the said order in the present proceedings.

4. Learned A.P.P. Mr. S.S. Patel has submitted at the Bar that the trial Court has committed gross error of law by not considering the fact that though Rule 32(e) of the rule was struck down by the Supreme Court in the said matter of DWARKANATH (Supra). The Central Government vide notification dated 29-4-1987 bearing no.GSR 422(e) amended Rule 32(e) and brought it into force with effect from 30th April, 1989 whereby it is made obligatory on the manufacturer or marketer to mention in the label of the product the batch number or code number in numerical or alphabetic form or in continuation of the same as a distinguishing number.

That, in the instant case, the sample of said product was taken on 19-7-1997 and the Public Analyst vide his report no.Q3/214/97 dated 20-8-1997 has observed that label does not contain batch number on any part of the said product and thereby the said sample of Kesri Milk Masal(Everest) is misbranded under Section 2(ix)(k) of the Act. Under the circumstances, the decision rendered by the Supreme Court in the matter of DWARKANATH'S case (Supra) has no application to the facts situation involved in the matter as amended Rule 32(e) of the Rules was in force and for the breach of the said Rule, the accused(respondents) are liable to be prosecuted for the offence made punishable under Section 16(1)(a)(i) of the Act.

5. Learned Counsel Mr. Karamte has urged that amended Rule 32(e) is not materially different than the original Rule 32(e) of the Rules and in the matter of DWARKANATH (Supra), the Supreme Court has held that Rule 32(e) is ultra vires the rule making power of the Government under Sec.23(1) of the Act. That thereby, even if it is believed that amended rule was in force on the date of alleged offence, the said Rule cannot be said

to be a valid Rule and the complaint based on the same cannot be maintainable. That various High Courts have followed the decision of DWARKANATH'S case (Supra) even after said amendment of Rule 32(e). To support the submission Shri Karamte has referred to and relied on the observations made by the High Court of Himachal Pradesh in the matter of M/s.LIPTON INDIA LTD. VS. STATE OF HIMACHAL PRADESH, reported vide PFA Cases 1991(1) page 1 as well as the observation made by the Delhi High Court in the matter of PRINCE GUTKA LIMITED VS. STATE AND ANOTHER, reported vide PFA Cases 1999(2) page 239.

6. On verification of fact and perusal of authorities cited at the Bar, the submission urged on behalf of the respondent cannot be accepted for more than one reason. It is not in dispute that after the decision of DWARKANATH (Supra), the Central Government has amended Rule 32(e) of the Rules in 1987 which has come into force from 30th April, 1989. That said Rule being in force at the time of alleged offence, in the present matter breach of the Rule amounts to offence under Sec.2(ix)(k) of the Act and makes the offence punishable under Sec.16(1)(a)(i). That even if the contents of the Rule is similar to the earlier Rule which was struck down in the matter of DWARKANATH (Supra), so long the Rule remains valid on a statute book is brought into force by amendment, it is binding to the parties and Court has to apply the same. That the observation made by the High Court of Himachal Pradesh in the matter of Lipton India Ltd. has no application to the present controversy because it appears that the amended provision of Rule 32(e) does not appear to have been brought to the notice of the Court when the matter was decided. Furthermore, amended Rule was substantially complied in the said matter as label contained the code number of the product, and as such, that decision is of no assistance to the respondent. Similar is the case with the observation made by the High Court of Delhi in the matter of PRINCE GUTKA.

7. On the basis of the foregoing discussion, it is required to be held that learned Chief Judicial Magistrate, Bhavnagar, has committed error of law while deciding application Exh.4 of Criminal Case no.23/98 by not considering the amended provision of Rule 32(e) of the Rules and following the observation made in the matter of DWARKANATH (Supra), which has resulted into miscarriage of justice, and as such, interference of this Court is necessary. Hence the following operative orders are passed:

The impugned order dated 5-11-1999 passed by the

Chief Judicial Magistrate, Bhavnagar, in the matter of Criminal Case no.23 of 1998 is hereby quashed and set aside and the Chief Judicial Magistrate, Bhavnagar, is directed to restore the Criminal Case no.23 of 1998 on his/her file and after issuing notice to the accused, decide and dispose of the same in accordance with law. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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